

★ JUL 11 2013 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RYAN O. GITTENS,

Petitioner,

X
NOT FOR PUBLICATION
MEMORANDUM & ORDER
13-cv-3020 (CBA)

– against–

ERIC HOLDER, U.S. Attorney General;
JANET NAPOLITANO, Department of
Homeland Security, USCIS District
Directors,

Respondents.

X
AMON, Chief United States District Judge:

Ryan O. Gittens, currently detained at Stewart Detention Center in Lumpkin, Georgia, filed the present action on May 17, 2013. Gittens seeks mandamus relief pursuant to 28 U.S.C. § 1361 and requests that this Court compel the Attorney General to re-open and adjudicate nunc pro tunc his previously filed naturalization application.

Gittens has filed two prior actions in this Court seeking the same relief. See Gittens v. Holder, No. 10-CV-00849 (CBA) (LB), 2011 WL 3206911 (E.D.N.Y. July 27, 2011); Gittens v. Holder, No. 12-CV-2363 (CBA), 2013 WL 839772 (E.D.N.Y. Mar. 6, 2013). The Court assumes familiarity with the facts and procedural developments recited therein and only those relevant to the current petition are mentioned here. On February 8, 2013, the Board of Immigration Appeals (“BIA”) issued a final order of removal against Gittens. Gittens, 2013 WL 839772 at *1.

As this Court has repeatedly noted, a petition for review filed with the appropriate court of appeals pursuant to 8 U.S.C. § 1252(b)(5) is the exclusive means of review for Gittens's nationality claim.¹ That Gittens has styled his claim for relief as a mandamus petition filed "in conjunction with" his § 2241 habeas petition does not cure this jurisdictional defect. See, e.g., De Ping Wang v. Dep't of Homeland Sec., 484 F.3d 615, 618 (2d Cir. 2007) (habeas corpus unavailable as a separate means of obtaining judicial review of a final order of removal); Bhatt v. Board of Immigration Appeals, 328 F.3d 912, 914-15 (7th Cir. 2003) (district court lacked jurisdiction over mandamus action to compel BIA to reconsider its decision).

For the reasons stated above, Gittens's application is denied. The Clerk of Court is directed to close the docket in this case.

SO ORDERED.

Dated: July 11, 2013
Brooklyn, N.Y.

/S/ Chief Judge Carol B. Amon

— Carol Bagley Amon /
Chief United States District Judge

¹ Gittens has filed a petition seeking review of the BIA's order, currently pending before the United States Court of Appeals for the Eleventh Circuit. See Ryan Omar Gittens v. U.S. Attorney General, No. 13-10946-C (11th Cir. filed Mar. 6, 2013).